In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1267

NEWSPAPER DRIVERS & HANDLERS LOCAL UNION NO. 372, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETITIONER

v.

DETROIT NEWSPAPER PUBLISHERS ASSOCIATION, ET AL., AND NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1–8) is reported at 404 F. 2d 1159. The Board's supplemental decision and order (Pet. App. A9–21) are reported at 166 NLRB No. 6. The earlier decisions of the Board (Pet. App. A33–98) and of the court of appeals (Pet. A25–32) are reported at 145 NLRB 996, and 346 F. 2d 527, respectively; the order of this Court vacating the earlier judgment of the court of appeals (Pet. App. A24) is reported at 382 U.S. 374.

350-546—69

JURISDICTION

The judgment of the court of appeals (Pet. App. A22) was entered on December 31, 1968. On March 21, 1969, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to April 15, 1969 (Pet. App. A23). The petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's findings that the employer locked out its employees principally to advance its own bargaining position, and that the lockout occurred after an impasse had been reached in the bargaining negotiations.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set out at Pet. App. A99.

STATEMENT

A. THE PRIOR PROCEEDINGS

On January 15, 1964, the Board issued a decision (145 NLRB 996; Pet. App. A33–98) holding that the Evening News Association, publisher of the Detroit News (The News), violated Section 8(a)(1) and (3) of the Act by locking out its employees after petitioner Local 372, which had been engaged in separate bargaining negotiations with both the News and the Detroit Free Press (Free Press), had called a strike against the latter. The Board based its decision on the ground that the lockout could not be considered "de-

fensive" and therefore permissible under *National Labor Relations Board* v. *Truck Drivers Local Union (Buffalo Linen Supply Co.)*, 353 U.S. 87, because the News and the Free Press did not bargain with Local 372 in an established multiemployer bargaining unit (Pet. App. A40). While the case was before the court of appeals, this Court, in *American Ship Building Co.* v. *National Labor Relations Board,* 380 U.S. 300, held that a single employer was entitled to use a lockout to advance its bargaining position, where an impasse in the negotiations had occured. The court of appeals, making its own assessment of the effect of *American Ship,* held that the lockout by the News was privileged thereunder and therefore set aside the Board's decision (346 F. 2d 527; Pet. App. A25–32). On the Union's petition for certiorari, in which the Board joined, this Court vacated that judgment and directed that the case be remanded to the Board so that it could determine, in the first instance, the effect of *American Ship* on this case (382 U.S. 374; Pet. App. A24).

B. THE PRESENT PROCEEDING

1. On the remand, the Board reaffirmed the facts previously found, which may be summarized as follows:

The News, which publishes an afternoon and Sunday edition, and the Free Press, which publishes a morning and Sunday edition, are the only large daily newspapers in Detroit, and the only members of the Detroit Newspaper Publishers Association, which handles their labor relations. For about twenty years, each paper has bargained separately with Local 372

as the representative of the distribution employees. (Pet. App. A10.)

In October 1961, Local 372 gave notice to the Free Press and the News of its desire to revise the respective contracts expiring on November 15, 1961, and separate negotiations commenced. On April 6, 1962, after seventeen bargaining sessions with the Free Press, Local 372 presented a revised proposal and advised that strike action would be recommended to the membership if a satisfactory offer was not received by April 11. On April 11, the Free Press presented its "last best offer," and the membership rejected the offer and voted to strike. On the same afternoon, a picket line was set up and the Free Press suspended publication. (Pet. App. A10–11.)

Between October 27, 1961, and January 11, 1962, Local 372 and the News engaged in thirteen bargaining sessions. There were no sessions from January 11 to March 22, although the News requested meetings, because Local 372 preferred to concentrate on negotiations with the Free Press. On March 22, the parties met again and Local 372 agreed to submit revised contract proposals. These proposals were received by the News on April 12, the day after Local 372 struck the Free Press. (Pet. App. A11.)[1]

[1] On April 9 and 10, officials of the News and the Free Press had met to discuss their common problems with respect to Local 372. The News concluded that 10 of the 18 issues remaining between Local 372 and the Free Press were also of interest to the News in its negotiations, and that 3 of the 10 were vital in its bargaining. (Pet. App. A11.) These issues were (1) negotiations in advance of any changes in the operation of the circu-

On the next day, April 13, Teamsters International President James Hoffa telephoned Association executive secretary Robert Butz to arrange a meeting concerning the Free Press contract. He also told Butz that "the News had better be present or on a standby basis at the meeting because the issues at the News would have to be settled or they'd be on strike also." President Hoffa and local Teamsters officials met with the Free Press on the afternoon of April 13 and the morning of April 14, and with the News on the afternoon of April 14. The meeting with the News was based on the proposals received by the News on April 12, which contained the identical demands made on the Free Press as to the three issues the News considered vital. (Pet. App. A12.) At the close of the meeting, the following dialogue occurred between Hoffa and Dorris, the News' negotiator (Pet. App. A12–13):

> He [Hoffa] said he wanted to inform us of a statement he had just given to the press, and radio. He said that he had informed them that they were going to call a union meeting and present to this meeting the company's last proposal. I corrected him that this was not the

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lation department; (2) a definition of "work-week" for certain employees; and (3) weekly wage increases greater than those granted to other unions (R. 50a; 1139a–1140a). The News urged the Free Press to maintain its position on them under all circumstances. The News agreed that, if Local 372 struck the Free Press over its refusal to accede to any of the 3 demands, the "News would support the Free Press and would not publish." The two publishers further agreed that "the Union should not be informed that a strike against one is a strike against both or what the position of the News would be in case of a strike at the Free Press." (Pet. App. A11–12.)

> company's last proposal but it had been submitted December 22nd and was still considered the best offer at that time, we were still willing to continue negotiations. He replied in effect regardless of whether it is the best proposal—he paraphrased it—then this is your final best offer and it is going to be submitted to the union.

When Local 372 struck the Free Press on April 11, the News ceased publication for three days, although all of its employees reported for work and were paid for those days. On Sunday, April 15, the News published a "double masthead" edition, called "The Detroit News - The Detroit Free Press, A Temporary Combined Edition." When work on the "double masthead" edition was completed, the News notified its employees that they should not report for work until further notice, because "there was no work available." (Pet. App. A12.)

No further meetings were held until negotiations were resumed at a meeting on April 18 at the offices of the Detroit Police Commissioner. By the end of that meeting, which lasted 33 hours, the Teamsters and the Free Press had reached agreement on a new contract. The Teamsters and the News resolved some of their outstanding issues and agreed that all unresolved issues would be submitted to arbitration. On April 19, the Teamsters ended its strike at the Free Press, and the News ended its lockout. (Pet. App. A13–14.).

2. Reviewing the facts, in the light of *American Ship, supra,* the Board found that "both [Local 372 and the News] viewed their negotiations as being deadlocked on key issues, and neither doubted that a

work stoppage would be required to break the deadlock" (Pet. App. A16).[2] The Board further found that, although the News had an interest in supporting the Free Press, the News' "lockout was preponderantly designed to force the Union to accept the Company's bargaining proposals" (Pet. App. A16). Accordingly, the Board concluded that the News did not violate the Act by locking out its employees from April 16–19, 1962 (Pet. App. A14, 18).

3. The court of appeals sustained the Board's findings. The court noted that "over identical issues, [Local 372] had struck the Free Press and threatened the News with a strike unless it acceded to the union's demands. The parties were unable to resolve their disputes and had to call upon an experienced mediator for assistance. This is the clearest kind of evidence of an impasse." (Pet. App. A3.) The court added that, although "The News' lockout had the effect of supporting the bargaining position of the Free Press," the facts "make it clear that the News' utilization of economic pressure was not motivated by a concern for the bargaining position of its competitor, the Free Press, but by its own direct and immediate economic interest in the outcome of the negotiations" (Pet. App. A4).

ARGUMENT

The questions posed in the petition (Pet. 3)—whether an employer may lock out its employees prior to an impasse in bargaining and for the purpose of bringing pressure on the striking employees of an-

[2] Member Brown dissented, finding that no impasse had occurred (Pet. App. A19–20).

other employer in a separate bargaining unit—are not presented on this record. For the Board and the court below found that there was an impasse in the negotiations between Local 372 and the News, and that the News' principal reason for locking out its employees was to support its own bargaining position. Since on these findings the lockout was clearly privileged under *American Ship, supra,*[3] the only question really presented is whether the findings are based on substantial evidence—an issue which does not warrant review by this Court. Moreover, as shown in the Statement, *supra,* the record provides ample support for the Board's findings.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[3] The Board has held that the rationale of *American Ship* would, in some circumstances, authorize a lockout even before an impasse. *Darling and Co.*, 171 NLRB No. 95. There is no occasion here to determine the correctness of this view.

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